(44)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 1903 of 2007

Petitioner — Bahadur Singh S/o. Jagmohan Singh Aged about - 56 years Occupation - Service, Police Department, R/o.- Chhoteatarmuda, Raigarh, Tahsil & Distt. - Raigarh (C.G.)

Versus

Respondents

1. State of Chhattisgarh Through:- Collector, Raigarh
2. Manager, Housing Board, Branch Office, Boirdadar, Raigarh (C.G.)
3. Assistant Deputy Director, Panchayat awam Samaj Sewa, Raigarh (C.G.)
4. Muni Singh S/o. Jagmohan Singh, Aged about - 60 years
5. Sundar Singh S/o. Jagmohan Singh, Aged about - 45 years
6. Chhotelal S/o. Jagmohan Singh Aged about - 40 years
7. Shishupal S/o. Late Dashrath Singh, Aged about 35 years

No. 4 to 7 - Occupation Agriculture R/o. Chhote Atarmuda, Raigarh, Tahsil & Distt. Raigarh (C.G.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present : Mr. A.K. Athaley, Advocate for the petitioner.
Ms. Sunita Jain, Panel Lawyer for the respondents No. 1 and 3.

ORDER

(Passed on 2nd day of April, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 8.2.2007

passed by the First Additional District Judge, Raigarh in Miscellaneous Appeal No. 43/2006 (Annexure P-6), whereunder the appeal filed against order dated 27.11.2006, passed by the Second Civil Judge, Class-II, Raigarh in Civil Suit No. 50A/2004 refusing to grant temporary injunction against the respondents No. 1, 2 and 3, was upheld and the appeal was dismissed.

2. The indisputable facts, in nutshell, are that the petitioner filed a Civil Suit for declaration of title and permanent injunction over the disputed land bearing Khasra No. 48 admeasuring 2.81 and Khasra No. 56 atmeasuring 4.88 total 7.69 Acres situated at village Chhoteatarmuda Patwari Halka No. 13, Tahsil and District Raigarh. Along with the plaint, the petitioner filed an application under order 39 Rule 1 and 2 of the Code of Civil Procedure praying for temporary injunction against the defendants/respondents No. 4 to 7. The Second Civil Judge, Class-II, Raigarh dismissed the application vide order dated 27.11.2006.

3. Being aggrieved, the petitioner filed the Miscellaneous Appeal before the First Additional District Judge, Raigarh. In Miscellaneous Appeal No. 43/2006, vide order dated 8.2.2007, the First Additional District Judge, Raigarh observed that the petitioner in the plaint itself has pleaded that the Housing Board has initiated construction of the house on the suit land and the petitioner was not in possession of the suit land. Thus, suit for declaration of title and for permanent injunction was filed. Admittedly, when the case of the petitioner/plaintiff that the Housing Board is in possession of the suit land, relief for temporary injunction under order 39 Rule 1 and 2 of the Code of Civil Procedure cannot be granted. Thus, it was held that the

order passed by the Second Civil Judge, Class-II, Raigarh was legal, valid and proper.

4. I have heard learned counsel appearing for the petitioner and have gone through the pleadings and the impugned order. The First Additional District Judge, Raigarh has rightly appreciated the dispute and the pleadings while holding that the possession of the suit land was not with the petitioner but with the Housing Board and the suit for declaration and permanent injunction itself indicate that the petitioner is not in possession with the suit land.

5. Thus, there is no illegality, perversity, irregularity or jurisdictional error to call for indulgence of this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. Thus, petition is accordingly dismissed. No order as to costs.

6. Consequently, I. A. 01, an application for grant of interim relief, stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

Subhash